
City Council

Motion without Notice

MM47.14	ACTION			Ward: 25
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Appeal of Committee of Adjustment Deferral and Request for City Staff Attendance at the OMB A0507/09NY – 1860 Bayview Avenue - by Councillor Jenkins, seconded by Councillor Parker

** This Motion has been deemed urgent by the Chair. Council has added this Motion to the agenda for debate.*

Recommendations

Councillor Jenkins, seconded by Councillor Parker, recommends that:

1. Should the Ontario Municipal Board decide to hear this matter, City Council authorize the City Solicitor and any other appropriate City staff including Community Planning staff and, if necessary, outside planning staff, to attend the Ontario Municipal Board to request a deferral of the hearing of the matter until such time as the appropriate technical details have been provided and the necessary technical review has been conducted.
2. Should the Ontario Municipal Board decide to proceed with a hearing on the merits, City Council authorize the City Solicitor and any other appropriate City staff including Community Planning staff and, if necessary, outside planning staff, to outline the City's concerns with the application as presented, and to seek modifications that would address not only the concerns of the various City Divisions but also those of the abutting residential community.

Summary

An application to the Committee of Adjustment, North York Panel, to permit the construction of a new two-storey retail building at 1860 Bayview Avenue was deferred *sine die* by the Committee on February 17, 2010.

Requested Variance(s) to the Zoning By-law:

1. Proposed Gross Floor Area of 149% (7,654.13m²) of the lot area (excluding the enclosed loading/circulation area) and 192% (9,863.04m²) of the lot area (including the enclosed loading/circulation area)

WHEREAS a maximum Gross Floor Area of 100% (5,137m²) of the lot area is permitted

2. Proposed lot coverage of 95.7% (4,916.11m²)

WHEREAS a maximum lot coverage of 33.3% (1,710.62m²) is permitted

3. Rear yard setback of 1.14m to the proposed building

WHEREAS a minimum setback of 7.5m is required

4. Proposed to have 223 parking spaces (at a ratio of one space per 35m² of gross floor area) located on site

WHEREAS a minimum of 275 parking spaces (at a ratio of one space per 28m² of gross floor area) are required to be located on site.

A Planning Staff Report accompanied the application and recommended that it be deferred *sine die* in order to address outstanding concerns and allow for a more thorough review of the proposal by various City Divisions (i.e. Transportation Services, Technical Services, Urban Forestry, Urban Design, and any others). A memorandum from the Transportation Services Division noted concerns relating to the scale of the development, the driveway access locations and operations and on-site operations that could not be assessed with the level of detail provided. Further technical details are necessary in order for staff to properly evaluate the functionality, impact and desirability of the proposal.

The Committee agreed with City Planning's recommendation, which was supported by many residents present at the hearing, and did not render a decision to grant or refuse the application, but rather deferred its consideration of the matter *sine die* in order to allow the applicant an opportunity to submit a site plan application. As this was a deferral, no Notice of Decision was issued in respect of this matter.

The applicant chose not to submit a site plan application but rather submitted an appeal of the Committee's deferral. Section 45(12) of the *Planning Act* provides a right of appeal against a decision of the Committee but does not explicitly provide a right of appeal of a deferral. The applicant is arguing that a deferral amounts to a refusal and therefore can be appealed to the Board. The determination of whether the appeal is valid and properly before the Board is a question of jurisdiction that will have to be decided by the Ontario Municipal Board. Accepting this as a valid appeal could set an undesirable precedent for future deferrals.

Should the Ontario Municipal Board decide to hear this matter, as the Councillor representing this community and on behalf of my colleague Councillor Parker who represents the residents on the east side of Bayview, I request that City Council authorize the City Solicitor and any other appropriate City staff including Community Planning staff and, if necessary, outside planning staff, to attend the Ontario Municipal Board to request a deferral of the hearing of the matter until such time as the appropriate technical details have been provided and the necessary technical review has been conducted. Further, should the Ontario Municipal Board decide to proceed with a hearing on the merits, that same staff be authorized to outline the City's

concerns with the application as presented, and to seek modifications that would address not only the concerns of the various City Divisions but also those of the abutting residential community.

(Submitted to City Council on March 31, April 1, 2010 as MM47.14)